JD(NY)–43–10
New London, CT

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

STA OF CONNECTICUT, INC., a wholly owned subsidiary of STUDENT TRANSPORTATION OF AMERICA, INC.

and **Case No. 34-CA-12620**

CSEA/SEIU. LOCAL 2001

Michael E. Werner, Esq., Counsel
for the General Counsel
John H. Spang Jr., for the Respondent

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in Hartford, Connecticut on August 31, 2010. The charge and the amended charge were filed on March 12 and May 27, 2010. The Complaint which was issued on June 29, 2010 and as amended at the hearing, alleged as follows:

1. That since January 2010 the Union has been the recognized 9(a) representative of the employees in the following unit:

> All full-time and regular part-time drivers and monitors employed by the Employer at its New London facility; but excluding all office clerical employees, mechanics and guards, professional employees and supervisors as defined in the Act.

2. That notwithstanding numerous requests on various dates from January 26, 2010 to May 24, 2010, the Respondent has failed to timely respond to the Union's request that the Respondent furnish it with complete plan descriptions for any healthcare and retirement plans that are offered to unit employees including the current cost of the any healthcare plans by employee. The General Counsel concedes that the Respondent furnished this information on June 1, 2010.

3. That since March 2, 2010, the Respondent misled the Union as to the existence or non-existence of certain information that had been requested by the Union.

4. That the Respondent has refused to furnish to the Union copies of certain policies that apply to bargaining unit employees.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the arguments made, I make the following

Findings and Conclusions

I. Jurisdiction

The parties agree and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. It also is agreed and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. The Alleged Unfair Labor Practice

The Employer is engaged in providing school bus services on a nationwide basis. In July 2009, it bid for and took over the operation of school bus services in New London, Connecticut. In this respect, the predecessor was a company called First Student and the Respondent took over the predecessor's terminal and hired almost all of the employees. As the predecessor had a collective bargaining relationship with the Union, the Respondent became a successor having a legal obligation to recognize and bargain with the Union. But as the successor, it did not have any obligation to adopt the predecessor's collective bargaining agreement with the Union. *Burns Int'l Security Services, 406 U.S. 272 (1972) and Fall River Dyeing & Finishing Corp. v. NLRB, 482 U.S. 27 (1987).*

Initially, the Respondent refused to recognize the Union, but after a charge was filed with the NLRB, a settlement was executed and it did agree to bargain. Thereafter, on January 25, 2010, the Union by Kevin Mercik sent an e-mail to the Company's representative requesting that negotiations begin "as soon as possible" and indicating that the Union was available during the week of February 1, 2010.

On January 26, Mercik sent an e-mail to John Spang requesting information. This stated:

> In order to fully prepare for our upcoming negotiations, the Union requires the following information:
>
> - A list of all bargaining unit employees including their name, address, telephone number(s), date of hire, rate of pay, number of regular hours worked during the 2009-2010 school years, number of extra work/charter hours worked during the 2009-2010 school years.
> - The names of all employees who participate in the 401(k) retirement program (if offered) and a history of employer contributions during the current school year.
> - Insurance usage information for all bargaining unit employees including level of coverage (single, single+1, family).
> - Complete plan descriptions for any healthcare and retirement plans offered to bargaining unit employees, including the current cost of healthcare plans by employee.

On February 11, Spang sent an e-mail to Mercik asking if the Union was available on March 1 or 2. Mercik replied on the same day and complained about the delay in starting negotiations. He indicated that the dates proposed by the company were "more than a month from the date on which the settlement agreement was originally signed." Nevertheless, Mercik stated that he was available on March 1 and 2. In a follow-up e-mail on the same date, he reiterated his request for the information initially requested on January 26.

On February 13, 2010, the Respondent e-mailed a message that stated *inter alia*;

1. The STA employees in New London are the same as were there in June 2009 with the exception of two or three… I'll have a complete list in the next few days for you. Expect it to look very familiar. Employees are paid the hourly rates the contract would have given them and the runs are most similar to 2007-2008. The volume of charter work is the same.

2. The 401k plan is the same as was in your contract, there is no employer contribution. I'll have a list of the employees who participate shortly. You can expect it be similar to June 2009.

3. Once again the benefit offered drivers and monitors, health insurance, is the same was what you had in your contract: there is no health insurance is offered.

4. No health insurance or retirement is offered; same as June 2009 contract.

Union representative Mercik responded on February 16, 2010 and stated *inter alia*;

> The information requested is necessary for collective bargaining. It is not sufficient to assert that conditions are the same as last year. Please provide specific and complete responses to all of my information requests. You have already had adequate time to do so.
>
> * * * *
>
> Is there a 401k plan in which drivers can participate? You write that you will provide a list of participating drivers and later write that no retirement plans are offered. Whether or not there is an employer contributing to your 401K program, please provide all relevant documents. Although the contract did not require a contribution to health insurance by First Student, health insurance and short-term disability plans were offered to drivers. As requested please provide usage information and relevant documents for any health insurance or disability plan in which drivers are eligible to participate.

The parties had their first bargaining session on March 2, 2010 and Mercik testified that he repeated his requests for information at the commencement of the meeting. This included the request for any and all company policies that affected the bargaining unit employees.

On March 2, Mercik sent an e-mail to the Company that stated *inter alia*;

> As we discussed, please provide copies of any and all policies that apply to bus drivers and monitors in the New London, CT facility. Do not let this new request delay my previous request for information, you may send it separately. As I stated this morning, you have had ample opportunity to produce the information requested for bargaining. Your failure to deliver a full and complete reply constitutes a failure to bargain in food faith, as it deprives the Union of information need to make a full contact proposal.

The next bargaining session was held on March 12, 2010. And by this time the Union had still not received any of the requested information relating to the Respondent's health insurance or employment policies in New London. When Mercik asked if the employees at New London were offered any health insurance, Spang did not respond.

In an e-mail dated March 12, 2010, Spang stated that the company was willing to accept the collective bargaining agreement that the predecessor had with the Union, provided that it had an "open shop" and eliminated any references to East Lyme and Waterford.

On March 16, Mercik sent an e-mail asking the Company to transmit its proposal in the form of actual contract language. With respect to his previous information requests, Mercik went on to state:

> The Union provided a full proposal for a collective bargaining agreement at our first session, only excluding sections that are impossible to address because of STA's ongoing failure to provide a complete response to the Union's information requests… Please also provide a full and complete response to all outstanding requests for information.

On March 23, 2010, Spang sent an e-mail stating that at the next negotiation session, scheduled for March 25, he would bring the information and that he would try to fax it ahead of time. By e-mail dated March 24, Mercik stated that there was no need to fax the information as he would get it on March 25.

A bargaining session was held on March 25 at which time, Spang turned over lists of the bargaining unit employees which contained their contact information, their rates of pay and their hours of work during the preceding school year. In addition, the Company turned over certain plan summaries for medical, dental and vision benefits that employees in the bargaining unit were eligible to participate in. Mercik testified that after reviewing the plan summaries, the Union requested copies of the actual plan documents and also information regarding the total costs of those plans. Spang responded that he did not have that information and would have to try to obtain it elsewhere. By this time, two months had gone by since the Union's initial request.

In an e-mail dated April 20, 2010, Mercik complained that the Company had refused to schedule another meeting after the meeting on March 25 and had not yet tendered a full written proposal for a contract. He went on to state:

> When we have met, you have provided false or misleading answers to our questions and made contradictory or unclear proposals. Further, STA has not provided the insurance information requested by the Union at the March 25 meeting.

Spang responded by e-mail dated April 21 and stated:

> Again our recollections are not the same. After you asked for our benefit plan document I answered that it was not something we had in our region or under our control but rather I would try to get it for you making no promises about when.
>
> I received it this week from Pennsylvania and can now comply with your request. The driver and monitor spreadsheet you also asked for on a school year basis has also been finished and is coming to you.

On May 21, 2010, Mercik sent an e-mail to Spang stating that he had set up a meeting at the New London Library for June 1, 2010.

On May 24, 2010, Mercik sent another e-mail to Spang which, in relation to the allegations of the Complaint, stated as follows:

I remind you that the Union has requested but not received the following:

- Any and all policies that apply to bus drivers and monitors in the New London, CT location, (requested March 2, 2010).
- Complete plan documents for insurance plans offered to bargaining unit employees, including full cost information.

On June 1, 2010, the parties met for their fourth bargaining session. At this meeting, the Respondent turned over to the Union the benefit plan documents and information regarding the plan costs. The General Counsel's position is that this tender of information was sufficient to meet the Respondent's legal obligation to turn over this category of information. But he also takes the position that by delaying production of this information for so long, the Respondent violated the Act by failing to timely furnish information that was relevant for collective bargaining. The production of the information was a little less than 5 ½ months after the initial request.

In addition to the health plan information, the Respondent also turned over to the Union a document that was described as a draft employee handbook that had recently been put together and that was awaiting final approval for adoption on a nationwide basis. (It was in fact, approved in the summer of 2010). This document had been put together by a collaboration of several human resource managers during 2010 and the draft was completed in May 2010. Previously, the Company had a patchwork of handbooks and written rules that were applicable to different locations throughout the country. Since the New London operation had been taken over from another company in July 2009, those employees, prior to the takeover, had been operating under the employment policies of the predecessor and it does not appear that the Respondent, after the takeover, issued any kind of employment policy manual or handbook; albeit an Alcohol and Controlled Substance Policy document was distributed, a notice regarding sexual harassment was posted, and a dress code notice was posted. Also employees were verbally advised about the use of cell phones.

Analysis

Pursuant to Section 8(a)(5), both parties to a bargaining relationship are required to bargain in good faith. That includes the obligation to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Requests for information may come in essentially two contexts; **(a)** bargaining for a collective bargaining agreement and/or **(b)** the processing grievances.

Where there is a request for information in either context, the Board makes a distinction between information which is presumptively relevant and all other information which is not presumptively relevant. Where the information requested is presumptively relevant, (such as the names of employees, their job titles, rates of pay, hours of work, etc.), the party seeking the information is not required to show relevance. *Ohio Power Co.*, 216 NLRB 987, 991 (1975), enfd. 531 F.2d 1381 (6th Cir. 1976); *Dyncorp/Dynair Services*, 322 NLRB 602 (1996), enfd. 121 F.3d 698 (4th Cir. 1997); *International Protective Services, Inc.*, 339 NRLB 541 (2003); *Deadline Express*, 313 NLRB 1244 (1994). As to requests for information that is presumptively relevant, it is the Respondent that has the burden of proving the lack of relevance, and the requesting party does not need to make a specific showing of relevance unless the presumption is rebutted. *Contract Carriers Corp.*, 339 NLRB at 858.

If the evidence shows that relevant information is not furnished in a timely manner the Respondent violates the Act. *NLRB v. Acme Industrial Co*., 385 U.S. 432, 437 (1967); *Knappton Maritime Corporation,* 292 NLRB 236 (1985); *Frito-Lay Inc*., 331 NLRB 1296 (2001); *ATC, LLC d/b/a ATC of Nevada*; 348 NLRB No. 43, (2006).

In the present case, the essential allegations are that the Respondent did not timely furnish information that was relevant to the bargaining process. There is no question but that the information sought by the Union related to the wages, hours and terms and conditions of employment of the employees in the bargaining unit. The terms and costs of benefit plans clearly relate to the employees' compensation and therefore are presumptively relevant. *Castle Hill Health Care Center*; 355 NLRB No. 196 (2010). Likewise the contents of any company employment policies would be presumptively relevant as these directly affect the employees' terms and conditions of employment.

The General Counsel acknowledges that the Union ultimately did receive the underlying documents describing the benefit plans and the cost of those plans. But the fact is that this information was not tendered until almost 5 ½ months after the Union had made its initial request and not until the fourth bargaining session was in session. To my mind, this constitutes an undue delay in furnishing the information and therefore, I conclude that the Respondent violated Section 8(a)(1) and (5) in this respect. See for example, *Woodland Clinic*, 331 NLRB 735, 737 (2002) (seven week delay); *Bituminous Roadways of Colorado*, 314 NLRB 1010, 1014 (1994) (six week delay); and *Aeolian Corp*., 247 NLRB 1231, 1244 (1980) (three week delay).

With respect to the request for any employment policies extant at the New London facility, the facts are a bit more ambiguous. It seems that during the period immediately after the takeover, the employees at New London were not given any employee manuals or handbooks and only received several notices regarding policy on specific topics. At the same time, the evidence is that the Respondent was in the process of drafting a nationwide employee policy manual that if approved, would have been applicable to all employees, including the New London employees.

Clearly, the law requires that an employer furnish to a union representing its employees, any employment policies that are applicable as to its employees. The problem here is that except for the specific policies posted or distributed, any other employment policies were in the process of being formulated and were not clearly applicable to the New London employees during the time of the negotiations.

The evidence demonstrates that at least several employment policies had been put into writing and were either posted or distributed after the Respondent took over the New London operation and before bargaining began. Those should, at the very least, have been turned over to the Union promptly upon request. Moreover, a draft of the manual was completed in May 2010, but was not shown to the Union until June 1, 2010. Since existing or potential future employment policies are crucial subjects of bargaining, it is my opinion that this draft document should have immediately been turned over to the Union.

Based on the above, it therefore is my conclusion that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to timely provide the union with information regarding its existing or potential future employment policies.

Conclusions of Law

(1) By refusing to furnish to the Union certain information, the Respondent has violated Section 8(a) (1) and (5) of the Act.

(2) The aforesaid violation affects commerce within the meaning of Section 2(2), (6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended 1

ORDER

The Respondent, STA of Connecticut, Inc., a wholly owned subsidiary of Student Transportation of America, Inc., its officers, agents, successor, and assigns, shall

1. Cease and Desist from

(a) Refusing to furnish to the Union in a timely manner, information that is relevant for collective bargaining.

(b) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, furnish to the Union, to the extent not already done, information regarding benefit plans applicable to the employees represented by the Union in New London Connecticut and any information regarding the existing employment practices or policies applicable to those employees.

(b) Within 14 days after service by the Region, post at its facility in New London Connecticut, copies of the attached notice marked “Appendix .”2 Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to

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1 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2 If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading “POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD” shall read “POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.”

employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since January 26, 2010.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated Washington, D.C., October 28, 2010.

_____
Raymond P. Green
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to furnish to CSEA/SEIU, Local 2001, information that is relevant to the bargaining process.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the rights guaranteed them by Section 7 of the Act.

WE WILL on request, furnish to the Union, upon request, updated and current information regarding employee benefit plans and their costs and any existing or potential future employment policies that would affect the employees in the bargaining unit in New London Connecticut.

STA OF CONNECTICUT, INC., a wholly owned subsidiary of STUDENT TRANSPORTATION OF AMERICA, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

A.A. Ribicoff Federal Building and Courthouse
450 Main Sreet, Suite 410, Suite 410
Hartford, Connecticut 06103-3022
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.